In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 661

FORREST PARROTT, ET AL., PETITIONERS

v.

SECURITIES AND EXCHANGE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION

OPINIONS BELOW

Neither the court of appeals nor the district court rendered any opinion.

JURISDICTION

The judgment of the court of appeals was entered on October 4, 1963 (Pet. App. xv, xvi). The petition for a writ of certiorari was filed on December 6, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 2101(*c*) and Rule 19(1)(b) of this Court. It should properly be invoked under 28 U.S.C. 1254(1).

716-880—64

QUESTION PRESENTED

Whether the court of appeals properly directed immediate compliance with subpoenas issued by a hearing examiner of the Securities and Exchange Commission requiring petitioners' appearance as witnesses in an administrative proceeding, where the only basis for delay was that petitioners were defendants in injunction actions instituted against them by the Commission.

STATUTES AND RULES INVOLVED

The pertinent statutes and rules are set forth in the petition at pages 3–6 and in the appendix thereto at pages i–xiii.

STATEMENT

On July 2, 1962, the Securities and Exchange Commission instituted an administrative proceeding under Sections 15(b) and 15A of the Securities Exchange Act of 1934, 15 U.S.C. 78o and 78o–3, to determine, *inter alia*, whether to revoke the registration of W. Allen Raleigh, d/b/a Raleigh Securities Company, a broker and dealer, because of certain alleged violations of the Securities Act of 1933 in connection with his sale and distribution of securities of three corporations: Hydramotive Corporation, Ampet Corporation and Petron Corporation. Another issue in that proceeding is whether petitioner Forrest Parrott should be found to be a cause of any order the Commission might enter (R. 26–32).[1]

[1] In the order instituting the proceeding it was alleged that Forrest Parrott was in control of the three corporations and arranged with Raleigh to sell securities of these corporations through the use of nominees in violation of certain of the reg-

Prior thereto, the Commission had filed two separate actions against the petitioners and others to enjoin the alleged unlawful sale and distribution of these securities. A suit relating to the stock of Hydramotive Corporation was instituted in December of 1961 in the United States District Court for the Western District of Oklahoma;[2] the second suit, relating to the stock of Ampet and Petron Corporations, was brought in the United States District Court for the District of Colorado in March of 1962.[3]

The administrative proceeding was convened in Washington, D.C., on August 8, 1962 (R. 306). In the course of the proceeding, at the instance of the Commission's staff, the hearing examiner issued subpoenas to a number of persons, including petitioners, which were returnable in Washington in August and early September 1962 (R. 14, 16, 339, 340, 343). Petitioners and others did not comply; they indicated that they would not appear except pursuant to court order (R. 19–20, 24–25, 347).

The Commission then instituted proceedings to enforce certain of the subpoenas in the District Court for the District of Columbia (R. 3), which transferred

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istration and anti-fraud provisions of the federal securities laws (R. 26–32). Petitioner Donald Parrott was president of petitioner Bond and Share Corporation, registrar for the Hydramotive Corporation (R. 302–303, 352).

[2] *Securities and Exchange Commission* v. *Bond and Share Corporation, et al.*, Civil Action No. 9528 (W.D. Okla.). This action has been tried and is awaiting decision.

[3] *Securities and Exchange Commission* v. *Ampet Corporation, et al.*, Civil Action No. 7480 (D. Colo.). Trial has not yet been had in this action.

the case to the District of Colorado (R. 101).[4] At the hearing before the District of Colorado court on October 8, 1962, counsel for petitioners suggested that the hearings in the Commission administrative proceedings should be held in Denver, Colorado (where petitioners reside), and stated that Raleigh, the primary party in those proceedings, had no objection to the hearing being held there (R. 405, 450). The district court indicated that because of the inconvenience to Denver residents of traveling to Washington, D.C., and in view of Raleigh's non-objection to a hearing in Denver, it would enforce the subpoenas only if the Commission held its hearing there (R. 448–453).

It developed, however, that Raleigh, who resides in a suburb of Baltimore, Maryland, had never consented, and in fact objected, to a transfer of the hearing to Denver (R. 363–364). When the district court on rehearing was informed of this fact, it decided not to order a hearing in Denver. But because of the two pending court actions instituted

[4] When the first persons subpoenaed failed to appear, the Commission instituted an enforcement action against them in the United States District Court for the District of Columbia (R. 3–7). All the subpoenaed persons, including petitioners, then moved in the United States District Court for the District of Colorado to quash the subpoenas (R. 63–64). This motion was denied on the ground that the Colorado court lacked jurisdiction (R. 65–86). The District Court for the District of Columbia thereafter transferred the subpoena enforcement action to the District of Colorado because the Colorado court had already considered the subject matter and because the persons subpoenaed resided in that district (R. 101). Subsequent to the order of the court of appeals in this case, only petitioners have continued to refuse to respond to the subpoenas.

by the Commission against the subpoenaed witnesses (*supra*, p. 3), the district court, although ordering that the subpoenas be "enforced in all respects," provided that the subpoenaed witnesses would not be required to ~~be~~ testify "elsewhere than in Denver for a period of 90 days" (R. 162–207). That order was entered on December 11, 1962 (R. 208–209).

Upon the expiration of the 90-day period, the Commission rescheduled the administrative hearing in Washington and directed the witnesses to appear. However, on petitioners' motion the district court, on March 22, 1963, extended the time for compliance until June 1, 1963, again because of the pending injunction actions (R. 220). On the Commission's motion for rehearing, the district court, on April 24, 1963, reaffirmed its prior rulings, granted petitioners' motion for a further extension to July 25, 1963, and granted leave to the subpoenaed witnesses thereafter "to request further delays for due cause shown" (R. 220, 254).

The Commission appealed from this order to the Court of Appeals for the Tenth Circuit (R. 256). Petitioners did not appeal. The court of appeals remanded the cause "with direction to enforce the subpoenas" (Pet. App. xvi).

ARGUMENT

The decision of the court below in ordering immediate enforcement of the administrative subpoenas was clearly correct, and petitioners present no question warranting review by this Court.

Petitioners' sole contention is that if they were required to testify at the administrative hearing prior to the trials of the injunction actions they would be placed "at a disadvantage at the hands of [the] administrative agency" (Pet. 9). The purported "disadvantage" is that the Commission could obtain in the administrative proceeding information for use in the injunction suits which, it is argued, it should be required to obtain in those actions by following the discovery procedures of the Federal Rules of Civil Procedure.[5]

There is serious doubt whether, in view of petitioners' failure to appeal from the district court's order which enforced the subpoenas (subject to certain conditions), they may now challenge the enforcement directed by the court of appeals. See *United States* v. *American Railway Express Company*, 265 U.S. 425, 435. In any event, petitioners' contention is plainly without substance. The subpoenas were issued in the normal course of an administrative proceeding to obtain evidence for use in that proceeding to determine whether a broker-dealer violated the federal securities laws. There is nothing in the record of the subpoena enforcement proceedings which even suggests that the Commission is using its administrative proceeding as a means of obtaining evidence for the injunction suits. The fact that the injunction suits relate to and involve certain events which are involved in the administrative proceeding

[5] Insofar as petitioners rely upon the action in the United States District Court in Oklahoma, their point is moot. The trial of that action has been completed.

neither limits the Commission's authority to conduct the latter proceeding nor justifies its suspension until the court cases have been decided. Cf. *Bowles* v. *Bay of New York Coal & Supply Corporation*, 152 F. 2d 330 (C.A. 2); *Sutro Brothers & Co.* v. *Securities and Exchange Commission*, 199 F. Supp. 438, 439 (S.D.N.Y.). It is similarly no ground for staying the administrative proceeding that, if anything is there developed which may be pertinent to the injunction suits, the Commission may use it in the court cases.

The administrative proceedings have been stalled for 15 months by the Commission's inability to obtain petitioners' testimony. The court of appeals was plainly correct in refusing to countenance any further delay and in directing immediate enforcement of the subpoenas.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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